

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

UNPUBLISHED

June 18, 2013

In the Matter of C. D. GOLLY, Minor.

No. 313643

Macomb Circuit Court

Family Division

LC No. 2011-000003-NA

---

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned).<sup>1</sup> We affirm.

**I. FACTUAL BACKGROUND**

Petitioner filed a petition to remove the minor child from the mother's home after the child witnessed an incident of severe physical abuse. The mother of the minor child threw nail polish on respondent father, set him on fire when throwing a cigarette on him, and chased him out of the home with a knife. The minor child was present and observed this incident. Petitioner alleged that this typified the relationship between respondent and the mother, and the minor child was continually exposed to this environment of domestic abuse. Petitioner also alleged that respondent had a history of substance abuse and had recently tested positive for marijuana.

The trial court authorized the petition to be filed and ordered the removal of the minor child from the home. The court took jurisdiction over the child and ordered respondent to comply with the case service plan, which included obtaining appropriate parenting skills, living substance free, and maintaining a stable income and home. Respondent also was instructed to take a domestic violence assessment and follow any recommendations. He was ordered to have no contact with the mother.

---

<sup>1</sup> Although respondent mother's parental rights to the minor child were terminated, she is not a party to this appeal.

Because respondent's progress was positive, he was granted extended unsupervised visitation, and the goal was reunification. Despite this progress, during one of the overnight unsupervised visits, respondent and the minor child slept over at the mother's house. Even more troubling was that the minor child, six years old at the time of the hearing, had been acting in an aggressively sexual manner with another child in her foster home. The minor child reported that she had viewed pornographic material when staying with her father, who left her unattended. The court ordered that visitation should thereafter be supervised and petitioner should file a supplemental petition for termination. Accordingly, petitioner filed the supplemental petition, requesting termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

At the termination hearing, Karen Crapo, a worker for Lutheran Social Services, testified that while respondent complied with his treatment plan, he failed to benefit from the parent classes as evidenced by his behavior in leaving the minor child alone with no adult supervision. Crapo also testified that the minor child had ongoing access to pornographic material at respondent's house. Not only did the minor child watch a pornographic video found under respondent's bed, she had been accessing pornographic programming on the television after respondent went to bed. Crapo also felt that respondent was not in compliance with his individual therapy requirement because he had missed several sessions.

Psychologist Dr. Patrick Ryan, who performed psychological evaluations on respondent and the child, testified that respondent had several positive traits, such as high levels of empathy and an understanding of development needs. However, Ryan also voiced concerns with respondent's ability to set limits, inconsistency, chronic depression, and partner selection skills. Ryan testified that the minor child had been damaged by her experiences and exhibited signs that she felt she had no control over her life. Ryan predicted that the minor child would have difficulties dealing with what occurred in her life, and a therapist would have his "hands full" treating her. Ryan questioned respondent's ability to handle a child with such complex needs, especially in light of respondent's inconsistency.

The trial court found that grounds for termination, MCL 712A.19b(3)(c)(i), (g), and (j), were proven by clear and convincing evidence. The court also found that termination was in the child's best interest because although respondent loved the minor child, his decision to take the child to see the mother demonstrated his lack of judgment. Accordingly, respondent's parental rights to the minor child were terminated. Respondent now appeals.

## II. TERMINATION OF PARENTAL RIGHTS

### A. Standard of Review

Respondent challenges the trial court's finding that there was clear and convincing evidence of the statutory grounds for termination and that termination was in the minor child's best interests. We review both findings for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

## B. Statutory Grounds

Pursuant to MCL 712A.19b(3)(c)(i), a trial court may terminate parental rights if it finds by clear and convincing evidence that “[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.”<sup>2</sup> Here, the condition that led to the adjudication was domestic violence in the home and that issue was not resolved at the time of the termination hearing. There was a history of domestic violence between respondent and the mother, culminating in the mother setting respondent on fire in front of the minor child. Despite this shocking act of abuse, respondent still associated with his abuser and spent the night with her and the minor child during the dispositional phase of the proceedings. Crapo also testified that respondent was still in need of domestic violence counseling, as he had yet to free himself of his dependency on the mother and would not do so within a reasonable time. Thus, the trial court did not clearly err in terminating respondent’s parental rights under subsection (3)(c)(i).

With respect to MCL 712A.19b(3)(g), a trial court may terminate parental rights if it finds by clear and convincing evidence that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” Respondent failed to provide proper care and custody for his child when he exposed her to domestic violence, left her without proper supervision, and permitted her access to pornography. Even though respondent had completed parenting classes, Crapo testified that respondent did not sufficiently benefit given his conduct after the classes. Crapo also questioned respondent’s ability to parent a highly sexualized child. Ryan as well expressed doubt regarding respondent’s ability to care for the child properly in light of the complex needs such a damaged child had. Given these circumstances, we do not find that the trial court clearly erred in terminating respondent’s parental rights under subsection (3)(g).

Lastly, the trial court properly found that termination was justified pursuant to MCL 712A.19b(3)(j), as “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” As Dr. Ryan testified, the minor child had been “damaged” by the past domestic violence she witnessed between respondent and the mother, and she was in need of extensive therapy. Because respondent maintained contact with the mother, the minor child was at risk for being exposed to that same trauma. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (emphasis in original) (MCL 712A.19b(3)(j) does not only apply to “the potential of *physical* harm or abuse” but may apply in instances where “the children had been, and continued to be, at risk of *emotional* harm.”) Moreover, during the pendency of the proceedings, respondent was

---

<sup>2</sup> In order to affirm the trial court’s finding, only one statutory ground for termination needs to be established by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Thus, respondent’s arguments are precluded if the trial court correctly terminated his parental rights based on MCL 712A.19b(3)(c)(i), (g), or (j).

allowed unsupervised visitation because he appeared to be progressing and had completed parenting classes. Yet, respondent left the minor child without adult supervision and allowed the child access to pornography. As a result, the child began behaving in an aggressively sexual manner toward another child in her foster home. Thus, the trial court did not err in finding that there was a reasonable likelihood the child would be harmed if returned to respondent.

### C. Best Interest

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). In determining whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the child’s safety and well-being. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

The trial court did not clearly err in finding that termination was in the minor child’s best interests. Dr. Ryan testified about respondent’s positive attributes, and the trial court noted how much respondent loved the minor child. Despite defendant’s suggestion to the contrary, that does not end inquiry. As the trial court noted, respondent continued to associate with the woman who violently abused him in front of the child, which reflected on his judgment and decision making skills. The evidence also established that respondent was in need of therapy for domestic violence issues, and that considering his decisions after parenting classes, he did not sufficiently benefit. Both Crapo and Ryan expressed significant concerns about respondent’s ability to parent the minor child in light of her complex needs. Given this evidence, we find that the trial court’s decision that termination was in the best interest of the child is not clearly erroneous.

### III. CONCLUSION

The trial court did not clearly err in finding that the statutory grounds for termination, MCL 712A.19b(3)(c)(i), (g), and (j), were proven by clear and convincing evidence and that termination was in the best interest of the child. We affirm.

/s/ Michael J. Riordan  
/s/ Michael J. Talbot  
/s/ Karen M. Fort Hood